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PER CURIAM :—We reverse the order of the District Judge, and remand the case for him to determine whether the former application to execute the decree was *boná fide*, notwithstanding *battá* was not paid; and we refer him to the judgment of Sir B. *Peacock, C. J.*, in *Goordodass Anchlolee* v. *Modhoo Koondoo*. (*a*)

Civil Petition.

Feb. 28.

NA'RA'YANBHA'I LA'LBHA'I.....*Appellant.*
GANGA'KRISHNA BA'LKRISHNA and another. *Opponents.*

Execution of Decree—Joint Liability—Appeal—Review—Power of High Court under Reg. II. of 1827, *Sec.* v., *Cl.* 2—*Act VIII. of* 1859, *Secs.* 378 *to* 380—*Act XXIII. of* 1861, *Secs.* 11 *and* 38.

The High Court should not, in the exercise of its extraordinary powers, give an appeal in a case where the law provides none.

Nor should the Court, in the exercise of those powers, interfere when such interference would have the effect of working an injustice.

A District Judge has power to review an order passed by him on appeal, in an application in the execution of a decree.

NA'RA'YANBHA'I sued Gangákrishṇa and Ratankrishṇa on a bond in the Court of the Principal Ṣadr Amín at Súrat, and obtained a decree against them in 1859 for the sum of Rs. 26,221-6-8.

On appeal by Gangákrishṇa, H. Hebbert, Judge of Súrat, decided, on the 19th of February 1859, that it was not competent to the plaintiff, Náráyaṇbhái, to sue upon the bond, (looking to the value of the stamp) for a greater amount than Rs. 20,000; concluding his judgment thus :—"Under this view the Court amends the decree of the Principal Ṣadr Amín, so far as it has been appealed against, and directs that Gangákrishṇa pay to Náráyaṇbhái Rs. 20,000, or make over the half-village of Moṭhá Varchá to him till he has realised that amount; the rest of Náráyaṇbhái's claim is rejected."

Náráyaṇbhái subsequently applied to the original court to execute both decrees, one against Gangákrishṇa for

(*a*) 6 Calc. W. Rep., Mis. R., 98.

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Rs. 20,000, and the other against Ratankrishṇa for the original amount decreed, and to make over, in the event of default of payment, the half-village to him until satisfaction of the decrees. The half-village of Moṭhá Varchá, to which Gangákrishṇa and Ratankrishṇa were jointly entitled, was subsequently given into the possession of Náráyaṇbhái.

Gangákrishṇa then petitioned the Court of the Principal Ṣadr Amín to restore possession of the half-village, Náráyaṇbhái having received his debt in full; but the Principal Ṣadr Amín found that the decree-holder was still entitled to receive Rs. 3,889-12-10; and considered that as Mr. Hebbert only altered the decree of the lower court with respect to Gangákrishṇa; therefore, as against Ratankrishṇa, Náráyaṇbhái was still entitled to hold the half-village, until he recovered the full amount of Rs. 26,221-6-8, decreed by the original court against both the parties. Náráyaṇbhái had also asked that interest should be allowed him on the amount of the original decree, and likewise the costs awarded to him in the original and appeal suits; but the Principal Ṣadr Amín refused the application, as no mention of interest was made in the decree, and as Náráyaṇbhái had neglected to pray for execution in respect of the amount of costs awarded.

Against this decision of the Principal Ṣadr Amín both parties appealed to C. G. Kemball, Acting Judge of the Súrat District, who held that Náráyaṇbhái, the plaintiff, could not execute his decree for more than Rs. 20,000 against either of the co-defendants in the original suit. The following is an extract from this judgment :—

"Any alteration of the judgment of the court of first instance in respect of one of the joint debtors must, from the very nature of the case, similarly affect that judgment as against the other. I, therefore, consider that the original decree, notwithstanding the remark of the Judge 'so far as it has been appealed against,' whatever those words may really mean, was amended by the judgment of the appellate court as against both the debtors.

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"On the second question, assuming that the original decree continued alive against Ratankrishṇa by the fact of his having failed to join in the appeal, it appears to me that the fact of the judgment against one of the judgment debtors having been satisfied, operated necessarily as a discharge to the other. Application was made for the execution of both decrees against the respective parties; and if it was right to comply with this application, it must be taken that both decrees were in course of satisfaction simultaneously. The decree for the smaller sum must, necessarily, be satisfied first; and, consequently, when that decree was satisfied, the larger decree became *per se* discharged. I imagine that if, on the judgment in appeal, Gangákrishṇa had at once paid up the Rs. 20,000, proceedings would have immediately been stayed against Ratankrishṇa on his pleading 'judgment with satisfaction against Gangákrishṇa.' The judgment in full having been satisfied against Gangákrishṇa in respect of the joint debt, I conceive it was competent to him to demand re-delivery of the security, which was also joint.

"The amount of the rents and profits of the half-village having been ascertained to be Rs. 22,038-15-10, I find that the debt due to Náráyaṇbhái has been satisfied, and, therefore, order that possession of the half-village shall be delivèred to the debtor Gangákrishṇa.

"Náráyaṇbhái has no title to interest, and I do not see how he can now ask possession to be continued until his costs be recovered, seeing that he failed to enter the amount in his darkhást.

Application was now (Feb. 28) made to the High Court (COUCH, C.J., and NEWTON, J.) to set aside the Judge's order as being illegal.

Shántárám Náráyán for the petitioner:—Ratankrishṇa, not having appealed to the District Court, cannot take advantage of the amendment made in the decree on the appeal of the other co-defendant. His not appealing to the District Court was tantamount to what may be called confessing

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judgment. The decree against Ratankrishna stands, and no court can say that the plaintiff shall not recover on it. If both had appealed, it would have been a different thing. The plaintiff then would have had the right of coming to the High Court on special appeal.

COUCH, C.J. :—If this case had been tried under Act VIII. of 1859, the District Judge would certainly have amended the decree as against both the defendants; for evidently the same reason that led him to amend the decree as against one, would have led him to do so as against the other; and the law would have authorised his doing so. It was, however, tried under the Regulations, and so the decree against Gangákrishna remained unaltered, he not having appealed.

But the liability of both in this case being joint, it would be inequitable to allow the plaintiff to execute a decree for Rs. 20,000 against one, and for Rs. 26,000 against the other.

This is not a case, then, in which we should exercise the extraordinary powers of the court to help the plaintiff; besides which, our interfering with the order of the lower appellate court would be equivalent to giving an appeal, in a case where the law has provided none. It may be that sometimes the Judge may be wrong, and yet we should not interfere. But in this case we certainly should not interfere, as the effect of our doing so would be to work an injustice.

Petition rejected.

March 7.

ON the petition of Gangákrishna, the District Judge in this case reported that, a mistake having been committed, it was not competent for him to add to his order on the subsequent application of the petitioner.

PER CURIAM (COUCH, C.J., and NEWTON, J.) :—We are of opinion that, under Secs. 378 to 380 of Act VIII. of 1859, and Sec. 38 of Act XXIII. of 1861, the Judge has power to review his order. It was an order passed by the Judge on appeal in an application in the execution of a decree: Sec. 11, Act XXIII. of 1861.